



*Council of the*  
**INSPECTORS GENERAL**  
*on INTEGRITY and EFFICIENCY*



Tony Ogden  
GPO, Chair

Peter McClintock  
SBA, Vice Chair

Hubert Bell  
NRC

Kathy Buller  
Peace Corps

Jack Callendar  
PRC

Martin Dickman  
RRB

J. Russell George  
TIGTA

Roy Lavik  
CFTC

Richard Moore  
TVA

Bill Roderick  
EPA

Calvin Scovel III  
DOT

Adam Trzeciak  
FMC

Next Meeting:  
August 11, 2009  
10 am

GPO

Carl Hayden Room

### **Proposed Amendments to the IG Reform Act and the Program Fraud Civil Remedies Act**

The Committee recently reviewed and approved proposed amendments to both the IG Reform Act and the Program Fraud Civil Remedies Act (PFCRA). Glenn Harris (Counsel to the IG at SBA) coordinated the effort and compiled suggested changes. Apart from fixing some typographical errors, the proposed amendments to the IG Reform Act seek to:

- Codify the provisions from the Reform Act in the Inspector General Act of 1978 concerning the designated Federal entity inspector general pay provisions of section 4(b) of the Reform Act; pay provisions of section 4(c) of the Reform Act for career Senior Executive Service personnel that become inspectors general; and the authority of the Integrity Committee to investigate allegations of wrongdoing against the Special Counsel or Deputy Special Counsel provided in section 7(b) of the Reform Act;
- Authorize all executive OIGs to fund or participate in CIGIE activities (the current language "department, agency, or entity of the executive branch" does not include certain designated Federal entities);
- Replace "agency" with "Federal agency, establishment or designated Federal entity" so that non-agency OIGs may promise to keep anonymous the identity of parties filing complaints;
- Clarify that reports OIGs must post on their websites include audit reports, inspection reports and evaluation reports consistent with semi-annual reporting requirements; and
- Repeal parts of the 2009 Omnibus Appropriations Act that conflict with codified Reform Act language regarding OIG websites.

Among other things, the PFCRA amendments would,

- Update the dollar limit on PFCRA claims and penalties from \$150,000 to \$500,000 and allow agencies to retain PFCRA recoveries to the extent needed to make them whole;
- Improve efficiency by allowing IGs discretion to prosecute PFCRA claims themselves rather than referring them to the General Counsel and permit greater delegation within the Department of Justice to authorize PFCRA claims; and
- Cover legislative branch IGs under the Act.

The Legislation Committee will circulate the proposed amendments for both Acts through CIGIE for comments before transmitting our proposals to the Hill.

### **H.R. 1507- Whistleblower Protection Enhancement Act of 2009**

H.R. 1507 and S. 372, both titled the "Whistleblower Protection Enhancement Act of 2009", were recently circulated by OMB for comments. Section 10 of H.R. 1507 requires IGs of covered agencies (the FBI and elements of the intelligence community) to investigate allegations of reprisal for whistleblowing by employees or former employees of those covered agencies. However, if an employee or former employee of any Executive agency makes any disclosure of

covered information that consists "in whole or in part of classified or sensitive information", that person shall be entitled to the same protection, rights, and remedies of Section 10. Therefore, Section 10 rights and remedies may apply to all Executive agency employees (and the respective IGs) depending on the type of information that is disclosed.

Section 11 amends the Federal Property and Administrative Services Act of 1949 (41 U.S.C. § 265) to enhance contractor employee whistleblower rights. It requires IGs to investigate, within a strict time frame of 180 days, complaints of contractor employees who disclose wrongdoing related to a contract or grant. We designed a brief survey to gauge the views of the IG community on these two H.R. 1507 provisions. The results showed that:

- A majority of the 46 IGs who responded are primarily concerned that imposing strict time requirements to investigate whistleblower reprisal complaints would undermine their ability to independently set priorities on OIG case investigations;
- A substantial majority of respondents believe they should have the discretion, as they do for complaints from employees, to not conduct an investigation;
- A substantial majority of respondents do not believe they should be required to make conclusions on burdens of proof concerning whistleblowing reprisal; and
- A substantial majority of respondents believe complainant's access to an IG's investigative files should be limited in accordance with any applicable laws, regulations, or established privileges.

On July 27, the Legislation Committee sent a letter outlining these IG concerns to the House Committee on Oversight and Government Reform and the House Committee on Homeland Security.

### **S.139-Data Breach Notification Act**

Senator Dianne Feinstein (D-CA) recently introduced S. 139, the "Data Breach Notification Act". This legislation would require that business entities and Federal agencies notify individuals of security breaches of personally identifiable information (PII) and to notify the U.S. Secret Service of certain PII security breaches. Because the legislation does not mention any coordination with, or notification to, Inspectors General of the Federal agencies affected, we surveyed the IG community on its views of S. 139. Our survey results showed that, out of 48 respondents, 98% indicated that IGs should be notified of their respective agency's security breaches. In addition, 92% of respondents noted that S. 139 should specifically state that OIGs should be notified of security breaches by their respective agencies. On July 10, the Legislation Committee sent letters based on the survey results to Senator Feinstein, as well as Senate Judiciary Chairman Leahy (D-VT), and Ranking Member Sessions (R-AL).

### **S. 976-Paperwork Reduction Act Amendment**

This legislation, introduced by Senator Charles Grassley (R-IA), would exempt from the Paperwork Reduction Act (PRA) information collected during the conduct of any investigation, audit, inspection, evaluation, or other review conducted by a Federal Office of Inspector General. The Bill has been referred to the Senate Committee on Homeland Security and Governmental Affairs.

On July 10, the Legislation Committee sent a letter to Senator Grassley expressing support for S. 976 and has been working on a meeting with Senators Lieberman (I-CT) and Collins (R-ME) of the Homeland Security and Government Affairs Committee to express CIGIE's support for moving the legislation forward. In late July, Senator Grassley introduced S. 976 in the form of an amendment (SA 1679) to the Department of Defense Authorization Act (S. 1390). Per request of Senate Judiciary Staff, on July 21 the Legislation Committee sent letters of support for SA 1679 to Senators Lieberman and Collins, as well as Armed Services Committee Chairman Levin (D-MI) and Ranking Member McCain (R-AZ).

### **Proposed Testimonial Subpoena Authority for Inspectors General**

Pending and recently enacted legislation provides new subpoena authority to IGs. S. 1390 and S. 1391, the Department of Defense Appropriations Bills, would provide the DOD IG with authority to subpoena witnesses and testimony, while H.R. 885, elevating the IG's of five financial oversight entities (FRB, CFTC, NCUA, PBGC, and SEC) to Section 3 Presidentially Appointed Senate Confirmed (PAS), would provide a slightly different subpoena authority to the IGs covered by that legislation.

These two proposed subpoena authorities, and the subpoena authorities recently granted the Recovery Accountability and Transparency (RAT) Board, may reflect a growing interest to provide IGs with testimonial subpoena authority. However, an IG community consensus has not yet been developed and concerns exist with regard to DOJ involvement. The committee plans to further explore IG concerns, and attempt to develop a consensus position to recommend to Congress to ensure consistent authorities across all IGs.